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Superior Court of California  
County of Sacramento



FILED  
FEB 10 2003  
By D. FULLER, Deputy Clerk

PENINSULA HEALTH CARE DISTRICT,  
Petitioner,

NO. 02CS01766

V.

COURT'S RULING ON  
SUBMITTED MATTER

FAIR POLITICAL PRACTICES  
COMMISSION,  
Respondent.

I. Introduction

This matter came on regularly for hearing on February 7, 2003, at which time the Court heard oral argument by the parties. The Court has considered the arguments presented at the hearing as well as the briefs and other documents submitted by the parties and now issues its ruling on the petition for writ of mandate.

This proceeding is a petition for writ of mandate to challenge a formal written opinion of respondent Fair Political Practices Commission issued at the request of petitioner Peninsula Health Care district pursuant to the Political Reform Act (Government Code sections 8100, et seq.), specifically, Government Code section 83114(a). The opinion found that one of petitioner's elected directors, Terilyn S. Hanco, had a disqualifying conflict of interest in matters involving

1 Mills Peninsula Health Services ("MPHS"), the operator of a hospital within the District, on the  
2 basis that MPHS was a "source of income" to Ms. Hanco within the meaning of Government  
3 Code section 87103(c). Petitioner challenges the opinion, arguing that respondent abused its  
4 discretion by applying an interpretation of the key term "source of income" that is unreasonable  
5 and contrary to law. For the reasons set forth in detail below, the Court disagrees and denies the  
6 petition for writ of mandate.

## 7 II. Evidentiary Issues

8 As a preliminary matter, the Court sustains petitioner's objection to Exhibits A, B and C  
9 to the Declaration of Robert E. Leidigh, which were offered as evidence on behalf of respondent.  
10 The Court finds that the proffered documents, specifically, pages from the League of Women  
11 Voters Web site regarding Terilyn S. Hanco, and on-line versions of articles from the San Mateo  
12 County Times newspaper, are inadmissible hearsay offered to prove the matters stated therein.  
13 Moreover, those documents are outside the record of the proceedings before respondent and are  
14 not relevant to the issues raised by the petition. The documents were not presented to respondent  
15 as part of the hearing process and add nothing to the statement of undisputed facts upon which  
16 respondent's formal opinion was based. Nor are they relevant to the issue of standing, for reasons  
17 discussed below. Therefore, the Court has not considered these documents in reaching its  
18 decision on the petition.  
19

20 The Court has admitted and considered the documents submitted by petitioner as exhibits  
21 1-15 with the petition and subsequently authenticated by the Declaration of Roger A. Brown filed  
22 on January 23, 2003. Those documents relate to the procedure through which respondent issued  
23 the opinion under review here and thus appear to be proper part of the record of these  
24 proceedings. The Court has also admitted and considered the materials submitted as Exhibits A-J  
25 with respondent's Request for Judicial Notice filed January 13, 2003, which is hereby granted.  
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### III. Standing

Before turning to the merits of the petition, the Court must first address the question of whether petitioner has standing to seek the writ. Respondent argues that petitioner lacks standing for two reasons. The first reason is that petitioner has no real interest in the subject matter of the opinion, primarily because it may act as a body on matters involving MPHS regardless of whether Ms. Hanko as an individual member is disqualified from acting on those matters. Thus, respondent argues, petitioner has no particular interest in the content of the opinion or the outcome of these proceedings. The second reason is that the issuance of a formal opinion is a matter that is completely within respondent's discretion under Government Code section 83114, and that a writ cannot be granted to require respondent to issue an opinion with the particular content petitioner desires.

On the first point, the Court notes that the question of whether petitioner will be disabled from acting on matters involving MPHS if Ms. Hanko must be disqualified is disputed by the parties on both factual and legal grounds. However, it is unnecessary to resolve these disputes in order to settle the issue of standing.

The Political Reform Act contains broad standing provisions that apply to these proceedings. Specifically, Government Code section 83114(a), cited above, permits "any person" to request a formal opinion from respondent, and Government Code section 83120 permits "an interested person" to seek judicial review of "any action of the Commission", including the issuance of a formal opinion. Petitioner clearly was authorized by these statutes to seek a formal opinion from the Commission regarding the possible disqualification of one of its members. Respondent did not dispute petitioner's right to do so and accepted its request.

Once the opinion had been issued at petitioner's request, petitioner likewise was "an interested person" for the purposes of seeking judicial review. Regardless of whether the opinion might have the effect of disabling petitioner from acting on certain matters, as an elected deliberative body petitioner has a compelling interest in having as many of its members as

1 possible available to participate on the vital matters within its competence. Such an interest is  
2 more than sufficient to confer standing in these proceedings. Moreover, it would be illogical to  
3 permit a party to seek an opinion but deny that same party the right to seek judicial review of the  
4 opinion once it was issued.

5 On the second point, while it is unclear exactly how far the Court may go in granting  
6 relief, it is clear that the writ may issue at least so far as to require respondent to withdraw an  
7 opinion which is found to be an abuse of discretion because it is against law. (See, *Brown v. Fair*  
8 *Political Practices Commission* (2000) 84 Cal. App. 4<sup>th</sup> 137, 151.) Since petitioner makes such  
9 contentions and seeks such relief here, the Court finds that it has standing.

#### 10 IV. Standard of Review

11 In the course of reviewing this matter, the Court has heard a great deal of argument from  
12 the parties regarding the proper level of deference it should give to respondent's opinion under  
13 *Yamaha Corporation of America v. State Board of Equalization* (1998) 19 Cal. 4<sup>th</sup> 1. The Court  
14 notes that appellate courts have stated that respondent's interpretations of the Political Reform Act  
15 generally should be given "great weight" unless clearly erroneous or unauthorized. (*Brown v.*  
16 *Fair Political Practices Commission* (2000) 84 Cal. App. 4<sup>th</sup> 137, 150; *Californians for Political*  
17 *Reform Foundation v. Fair Political Practices Commission* (1998) 61 Cal. App. 4<sup>th</sup> 472, 484.) On  
18 the other hand, petitioner argues that the present opinion represents a departure from existing  
19 interpretations of the Act and is so unreasonable as to be entitled to very little, or no, deference.  
20

21 In this case, respondent's opinion is entitled to substantial deference based on its role as  
22 the agency designated to interpret the Political Reform Act as well as on the content of its past  
23 interpretations of the Act on the issue of "sources of income". The present opinion is well within  
24 the scope of respondent's past interpretations of the Act, such as Regulation 18703.3 and the  
25 various advice letters cited here, and certainly does not clearly contradict them. Any uncertainty  
26 or "wavering" in respondent's approach to the present set of facts is, in the Court's view, better  
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1 attributed to the novel and unique nature of those facts than to any administrative inconsistency or  
2 an improper attempt to reach a pre-ordained result.

3 At the same time, the controversy over the proper standard of review is something of a  
4 "side issue". As will become evident from the discussion below, respondent's opinion here was  
5 sufficiently reasonable as a matter of fact, and so clearly within the language and spirit of the  
6 Political Reform Act as a matter of law, that it would be upheld even if the Court gave it no  
7 special deference whatsoever.

8 V. Respondent's Interpretation of Statutory Term "Source of Income"

9 In reaching the conclusion that Ms. Hanco should be disqualified from matters involving  
10 MPHS, respondent found that MPHS was a "source of income" to her within the meaning of  
11 Government Code section 87103. Petitioner argues that respondent's interpretation of the  
12 statutory term "source of income" was unreasonable and against law because MPHS, if it was a  
13 source of income to Ms. Hanco at all, was a remote and indirect source that was never intended to  
14 come within the scope of the Political Reform Act. This matter thus presents the Court with the  
15 task of statutory interpretation.  
16

17 The fundamental rules of statutory interpretation are well settled and may be summarized  
18 briefly. First, the Court should ascertain the intent of the Legislature, or, in the case of an  
19 initiative measure such as the Political Reform Act, the people of the State, so as to effectuate the  
20 purpose of the law. Second, the provision in question must be given a reasonable and common-  
21 sense interpretation consistent with the apparent purpose and intention of the lawmakers, practical  
22 rather than technical in nature, which upon application will result in wise policy rather than  
23 mischief or absurdity. Significance, if possible, should be attributed to every word, phrase,  
24 sentence and part of an act in pursuance of the legislative purpose. The Court should take into  
25 account matters such as context, the object in view, the evils to be remedied, the history of the  
26 times and of legislation upon the same subject, public policy, and contemporaneous construction.  
27 Finally, consistent administrative construction of a statute over many years, particularly when it  
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1 originated with those charged with putting the statutory machinery into effect, is entitled to great  
2 weight unless clearly erroneous. (*DeYoung v. City of San Diego* (1983) 147 Cal. App. 3d 11, 17-  
3 18, and cases cited therein.)

4 Applying the foregoing principles to this matter, the Court finds that respondent's opinion  
5 interpreted and applied the statutory term "source of income" to Ms. Hanco's individual situation  
6 in a manner that was reasonable and in harmony with the purposes of the Political Reform Act.

7 It is clear that the people of the State of California enacted the Political Reform Act out of  
8 concern over the possibility that the governmental process could be corrupted, and the public  
9 interest damaged, by public officials acting on matters in which they had a personal financial  
10 interest. (See, for example, *Socialist Workers 1974 California Campaign Committee v. Brown*  
11 (1975) 53 Cal. App. 3d 879, 888.) For the record, there is absolutely no suggestion of corruption  
12 or improper conduct of any kind on the part of Ms. Hanco. All of the facts suggest that Ms.  
13 Hanco and petitioner acted properly and wisely by identifying a potential conflict of interest and  
14 seeking official guidance on it before taking any action. Such an approach is entirely in harmony  
15 with the purposes of the law, which is a preventive one, operating "...without regard to actual  
16 corruption or actual governmental loss... 'directed not only at dishonor, but also at conduct that  
17 tempts dishonor'...." (*Commission on California State Government Organization and Economy*  
18 *v. Fair Political Practices Commission* (1977) 75 Cal. App. 3d 716, 723.)

19  
20 Government Code section 81001(b) makes the objectives of the Political Reform Act  
21 explicit, declaring: "Public officials, whether elected or appointed, should perform their duties in  
22 an impartial manner, free from bias caused by their own financial interests or the financial  
23 interests of persons who have supported them." Thus, one of the purposes of the Act is: "Assets  
24 and income of public officials which may be materially affected by their official actions should be  
25 disclosed and in appropriate circumstances the officials should be disqualified from acting in  
26 order that conflicts of interest may be avoided." (Government Code section 81002(c).) The Act  
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1     itself declares that it, and thus all its provisions, should be liberally construed in order to  
2     accomplish its purposes. (Government Code section 81003.)

3     The Political Reform Act addresses potential conflicts of interest through a detailed set of  
4     provisions governing the disclosure of personal financial interests by public officials, and the  
5     circumstances under which such interests should result in disqualification. Two are relevant to  
6     this case.

7     Government Code section 87100 provides the statutory basis for disqualification of public  
8     officials based on personal financial interests. The statute states: "No public official at any level  
9     of state or local government shall make, participate in making or in any way attempt to use his  
10    official position to influence a governmental decision in which he knows or has reason to know he  
11    has a financial interest."

12    Government Code section 87103 defines the term "financial interest", stating in pertinent  
13    part: "A public official has a financial interest in a decision within the meaning of Section 87100  
14    if it is reasonably foreseeable that the decision will have a material financial effect,  
15    distinguishable from its effect on the public generally, on the official...or on any of the following:  
16    [...] (c) Any source of income...aggregating five hundred dollars (\$500) or more in value  
17    provided or promised to, received by, [sic] the public official within 12 months prior to the time  
18    when the decision is made."

19    In this case, it was undisputed that MPHS was not a "source of income" to Ms. Hanco in  
20    the sense that MPHS directly paid money or wrote checks to her. Instead, the only "direct payor"  
21    of income to Ms. Hanco relevant to this matter was her employer, Baxter Healthcare Corporation.  
22    Baxter paid Ms. Hanco both a salary and incentive compensation based on total sales generated in  
23    her territory, while MPHS never directly paid Ms. Hanco anything. Nevertheless, respondent  
24    found that a portion of the incentive compensation payments Ms. Hanco received from Baxter  
25    should be attributed to MPHS under section 87103(c).  
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1 To support this finding, respondent cited the following facts: Ms. Hanko marketed  
2 Baxter's products directly to agents and employees of MPHS, thus influencing MPHS purchases  
3 of Baxter products; even though MPHS made its purchases of Baxter products through third-party  
4 wholesalers, there was nonetheless a direct relationship between the purchasing activity of MPHS  
5 and the amount of incentive compensation Ms. Hanko received; the amount of Ms. Hanko's  
6 incentive compensation that could be attributed to MPHS purchases of Baxter products could be  
7 quantified; and that amount exceeded the \$500 threshold of the statute.

8 The Court notes that all of the facts summarized above derive from respondent's opinion.  
9 Those facts were (and are) essentially undisputed. Indeed, the facts were presented to respondent  
10 by petitioner on behalf of Ms. Hanko, in keeping with the principle that respondent does not act as  
11 a finder of fact when it issues opinions. In deciding this matter, therefore, the Court has based its  
12 findings strictly on the basis of the facts as stated in the opinion.

13 Interpreting the relevant provisions of the Political Reform Act in light of the undisputed  
14 facts, respondent's opinion held, in effect, that a potentially disqualifying "source of income"  
15 could be found by tracing the flow of income beyond the person or entity that actually paid money  
16 or wrote a check to the public official, in this case to an entity two "transaction levels" away from  
17 Baxter, in petitioner's words, the "direct payor".

18 Petitioner attacks respondent's analysis as unreasonable and contrary to statute.  
19 Petitioner's primary argument is that the term "source of income" as used in the Political Reform  
20 Act refers only to the "direct payor" of money to a public official (in this case, Baxter), and  
21 cannot refer to an "indirect" or "remote" source of income such as MPHS.

22 The Court finds this argument to be unpersuasive. Looking first at the language of the  
23 Political Reform Act itself, the Court finds nothing therein that suggests the limitation for which  
24 petitioner argues. Section 87103 in general, and the term "source of income" in particular, do not  
25 appear to contain anything that would confine their application to a "direct payor" of income. In  
26 fact, the words "direct payor", or any words or phrases to that effect, do not appear in the statute.  
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1 Moreover, a common sense, "plain language" interpretation of the term "source of  
2 income" argues against any limitation such as petitioner urges, since an "indirect source" is no  
3 less a "source" for being "indirect". There are a number of easily conceivable situations in which  
4 a person or entity that is not the direct payor of money may still be seen as the "source" of the  
5 income. Some of those, such as situations involving sales commissions, already are the subject of  
6 specific regulations enacted by respondent. (See, for example, 2 C.C.R. section 18703.3.)  
7 Nothing in the statute itself compels the conclusion that such situations were beyond its reach.

8 Looking beyond section 87103 to other provisions of the Political Reform Act, there are  
9 strong indications therein that the term "source of income" was not intended to be limited to a  
10 "direct payor" of money. The Legislature has enacted at least two amendments to the Political  
11 Reform Act addressing specific situations and providing that in those situations only the "direct  
12 payor" should be considered the "source of income" to a public official. For example,  
13 Government Code section 87103.5 provides that under specified conditions a retail customer of a  
14 business entity engaged in retail sales is not a source of income to a public official with an  
15 ownership interest in the entity. Government Code section 87103.6 similarly provides that a  
16 person making a payment to a government agency for application fees or certain other costs is not  
17 a source of income to a person retained or employed by the agency. The fact that the Legislature  
18 explicitly made both statutes exceptions to the general rule of Section 87103(c) strongly supports  
19 the conclusion that the scope of Section 87103(c) is not limited to the "direct payor" of money.  
20 Otherwise, the specific exceptions would not have been necessary.

22 Finally, looking to the purposes that the Political Reform Act was intended to serve,  
23 petitioner's limitation on the scope of the term "source of income" would frustrate those purposes  
24 and lead to absurd results. Construing the term "source of income" to apply only to a "direct  
25 payor" would permit corrupt public officials to defeat the disclosure and disqualification  
26 provisions of the Act by the simple expedient of routing otherwise disclosable or disqualifying  
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1 income to themselves through intermediaries and third parties. It would be absurd to accept an  
2 interpretation of the Act that would render it so easy to evade.

3 Having applied the rules of statutory construction as explained above, the Court thus finds  
4 that respondent's opinion was not based on an unreasonable interpretation of the Political Reform  
5 Act and was not precluded by the language of the Act.

6 Even if the Political Reform Act itself does not explicitly limit the term "source of  
7 income" to a "direct payor" of money, petitioner argues that respondent has adopted such an  
8 interpretation through its official regulations, and that respondent therefore is precluded from  
9 adopting a new approach in variance with those regulations.

10 Petitioner's argument is based on 2 C.C.R. section 18703.3, a regulation promulgated by  
11 respondent in 1993. Entitled "Economic Interest, Defined: Source of Income", the regulation  
12 provides, in pertinent part: "(a) A public official has an economic interest in any person *from*  
13 *whom he/she has received income....*" (Emphasis supplied.) Petitioner argues that the  
14 emphasized language in the regulation can only mean the "direct payor", and contends that,  
15 having once officially adopted this interpretation of the term "source of income" by regulation,  
16 respondent may not depart from or contradict it in a formal opinion.

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18 Having reviewed the regulation as a whole, the Court is not persuaded that it precludes  
19 respondent from attributing income to a person or entity other than the "direct payor". While the  
20 language of the cited portion of the regulation suggests that in the normal situation it will be the  
21 "direct payor" that is the "source of income" to a public official, much of the regulation in fact is  
22 concerned with outlining situations in which persons or entities other than the "direct payor" will  
23 be considered a "source of income". Specifically, subsection (c) of the regulation sets forth in  
24 detail situations in which two or even three sources of income may be found for a single payment  
25 of "commission income" made to insurance brokers or agents, real estate brokers or agents, travel  
26 agents or salespersons, stockbrokers, or retail or wholesale salespersons. The existence of these  
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1 detailed provisions attributing income to multiple sources is a strong indication that respondent  
2 did not intend Regulation 18703.3 to be an inflexible limitation.

3 Petitioner argues that the existence of the commission income provisions actually  
4 strengthens its argument that Regulation 18703.3 must be viewed as limiting the meaning of the  
5 term "source of income" to the "direct payor". Invoking the ancient rule of statutory  
6 interpretation "*expressio unius est exclusio alterius*", petitioner asserts that the commission  
7 income provisions should be viewed as specific exceptions to the general rule of subsection (a)  
8 and, indeed, the only permissible exceptions, unless (presumably) respondent chooses to enact  
9 additional exceptions in the form of a new regulation.

10 Once again, the Court is not persuaded by petitioner's arguments. The doctrine of  
11 *expressio unius est exclusio alterius* is not an inflexible rule or a "magical incantation", but has  
12 been described by the Supreme Court as a "mere guide" to be utilized when a statute is  
13 ambiguous. (*Estate of Banerjee* (1978) 21 Cal. 3d 527, 539; *Dyna-Med, Inc. v. Fair Employment*  
14 *and Housing Commission* (1987) 43 Cal. 3d 1379, 1391.) The rule is inapplicable where no  
15 manifest reason exists why other things than those enumerated should not be included and  
16 exclusion would result in injustice, or where the operation of the rule would contradict a  
17 discernible and contrary legislative intent. (*Estate of Banerjee* (1978) 21 Cal. 3d 527, 539, fn. 10;  
18 *In re Michael G.* (1988) 44 Cal. 3d 283, 291.)

19 In this case, the Court finds that the rule does not prevent respondent from attributing  
20 incentive compensation income to an entity other than the "direct payor". The Court finds no  
21 manifest reason why "multiple source" situations other than commission income should not be  
22 included. As discussed above, the language of the Act itself imposes no such limitation. Indeed,  
23 petitioner's interpretation would seem to put the regulation at variance with the statute under  
24 which it was enacted, a conflict the Court should strive to avoid.

25 Moreover, limiting "multiple source" situations strictly to those listed in the regulation  
26 would frustrate the purposes of the Political Reform Act. The vital purposes of the Act are  
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1 furthered by an interpretation of the law that gives respondent the flexibility to find the real source  
2 of income by going beyond the "direct payor" where the facts demand it. As noted above, a  
3 limitation of the kind petitioner suggests would permit, perhaps even promote, easy evasion of the  
4 Act. Such a result is not favored. Thus, the Court does not view the regulatory provisions on  
5 commission income as an exclusive list of "multiple source" situations. Instead, those provisions  
6 should be viewed as a non-exclusive list of commonly-occurring situations that is not intended to  
7 preclude respondent from attributing income to multiple sources in other situations of a similar  
8 nature. (See, *Estate of Banerjee* (1978) 21 Cal. 3d 527, 539, fn. 10.)

9 At its heart, petitioner's case appears to be based on the theory that the only manner in  
10 which respondent may address "multiple income source" cases such as Ms. Hanco's is through the  
11 formal regulatory process, as it did with the commission income provisions of Regulation  
12 18703.3. Indeed, petitioner alludes to this theory (without fully developing it) by asserting that  
13 respondent's opinion constitutes an illegal "underground regulation".

14 The Court finds that petitioner's argument must be rejected. If accepted, it would unduly  
15 limit respondent's statutory powers and hamper its ability to respond to new and unique situations.  
16 Under the Political Reform Act, respondent has the power to promulgate regulations (Government  
17 Code section 83112) and to issue opinions at the request of any person (Government Code section  
18 83114). Petitioner's argument unfairly detracts from the second power.

19 In fact, there appear to be good policy reasons to have two different procedures available.  
20 The opinion process permits respondent to respond quickly and flexibly to novel, even unique,  
21 sets of facts that may not call for a formal regulation. It also permits respondent to provide  
22 immediate guidance to public officials and bodies in a way the formal regulatory process does not.  
23 The statutory right of judicial review provides a check against any abuse of discretion.  
24 Petitioner's theory essentially nullifies this dual-track process and makes the formal regulatory  
25 process the only available path for respondent, rendering the statutory provisions on opinions so  
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1 much surplusage. Such a result should be avoided. (See, *Dyna-Med, Inc. v. Fair Employment and*  
2 *Housing Commission* (1987) 43 Cal. 3d 1379, 1387.)

3 Finally, the Court notes that respondent's opinion is not only within the scope of the law,  
4 it is also reasonable as a matter of fact. Ms. Hanco undeniably was able to identify and quantify a  
5 portion of her income that was specifically attributable to MPHS purchases of products from her  
6 employer. The fact that the money she earned in incentive compensation was actually paid to her  
7 by her employer, and not by MPHS, is, as respondent found, a matter of semantics rather than  
8 reality. Moreover, the possibility that Ms. Hanco might face an issue in her official capacity that  
9 would have a material effect on that portion of her income by increasing or decreasing MPHS'  
10 purchasing activity is clearly one of the situations the Political Reform Act was intended to  
11 address. Respondent's application of the law to the unique facts of this case was appropriate and  
12 sensible.

13  
14 VI. Conclusion

15 Respondent's opinion held, on the basis of the facts presented to it, that MPHS was a  
16 "source of income" to Terilyn S. Hanco under Government Code section 87103. The Court finds  
17 that respondent's opinion was not an abuse of discretion. Respondent's interpretation of the  
18 statutory term "source of income" was reasonable under the facts presented and was not precluded  
19 by the letter or the spirit of the Political Reform Act. The petition for writ of mandate is therefore  
20 denied.

21 Counsel for respondent is directed to prepare a formal written order and judgment  
22 denying the petition, submit them to counsel for petitioner for approval as to form (by fax is  
23 permissible), and thereafter submit them to the Court for signature and filing.

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26 Dated: 3/8/03

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HONORABLE TALMADGE R. JONES



SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

PENINSULA HEALTH CARE  
DISTRICT,  
Petitioner,

v  
FAIR POLITICAL PRACTICES  
COMMISSION  
Respondent.

No. 02CS01766

CERTIFICATE OF MAILING

I, the undersigned, do hereby certify that I am not a party to the cause and that on March 5, 2003, at Sacramento, California, I served copies of the Court's Ruling on Submitted Matter dated March 3, 2003, by placing said documents in an envelope addressed as follows:


Roger A. Brown, Esq.  
P. O. Box 475  
Sonora, CA 95370

Robert E. Leidigh, D.A.G.  
Christopher E. Krueger, D.A.G.  
P. O. Box 944255  
Sacramento, CA 94244-2550

I further certify that the envelope was sealed and deposited in the mail with postage thereon fully prepaid.

DATED: March 5, 2003

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

By   
Debora Fuller, Deputy Clerk